

# Office Action Summary

**Application No.**

10/789,612

**Applicant(s)**

BILLUPS, ANTHONY L.

**Examiner**

Gary K. Graham

**Art Unit**

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,5 and 7-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5 and 7-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- Paper No(s)/Mail Date \_\_\_\_.

- 4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: 20081222
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

### DETAILED ACTION

Upon review and reconsideration, the previously indicated allowability of claims is withdrawn. The Examiner apologizes for any inconvenience. An action follows.

#### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5, 8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Nishiyama et al (US patent 4,392,269).

The patent to Nishiyama discloses the invention as is claimed (see figs. 1, 8-12). Nishiyama discloses an apparatus comprising a handle member (203) with a gripping portion at one end (as in fig.1) and an extension portion at the other. The extension portion extends (fig.8) into a channel defined by portions (213,215) in boss (208) of head member (205). Note figures 11, 12 wherein it can be seen that some adjustability in the length of the extension member into the channel is allowable. The head member (see fig.10) includes a pair of spaced longitudinal channels (221) formed by folded back portion (220). A scrubbing member (fig.9) is selectively mounted to the head member by insertion of a pair of mounting members thereon, in the form of spaced longitudinal flanges (225), into the channels. The scrubbing member has a main portion (224) from which a

plurality of bristles (226) extend outwardly. The scrubbing member is “adapted” to scrub or contact any surface so desired, including skin of a user. A locking member (204) is operationally coupled to the head and around the extension portion for inhibiting movement of the extension portion with respect to the head member when actuated by a user. The locking member is threadably (212,216) coupled with the head member such that rotation of the locking member acts to reduce the diameter of the channel to frictionally engage the extension of the handle. Thus, by adjusting the depth the extension is inserted into the channel, some adjustment of the length of the handle member is enabled.

With respect to claim 1, terming the apparatus a “body scrubbing apparatus” does not distinguish from Nishiyama as such can be used in any manner so desired. Such at most relates to the intended use of the device and does not define any particular structure, at least none not disclosed by Nishiyama.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nishiyama et al (US patent 4,392,269) in view of Ancil (US patent 5,791,006).

The patent to Nishiyama discloses all of the above recited subject matter with the exception of the gripping portion having an arcuate portion and straight portion.

The patent to Ancil discloses a cleaning device wherein the handle includes a gripping portion (16) that has an arcuate portion (22).

It would have been obvious to one of skill in the art to curve the gripping portion of the handle of Nishiyama, as clearly suggested by Ancil, to provide a more comfortable handle. Use of arcuate gripping portions is well known.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nishiyama et al (US patent 4,392,269) in view of Young et al (US patent 5,083,840).

The patent to Nishiyama discloses all of the above recited subject matter with the exception of the mounting members comprising base portions with angled securing portions thereon to engage vertical and angled portions of the channels in the head.

The patent to Young discloses a brush arrangement (figs. 14-16) wherein attachment of a head scrubbing member (155) to a support (150) is achieved by securing mounting members (157) in mounting channels (151). The mounting members each comprise a base portion and a securing portion wherein the base portion is coupled to the scrubbing member and the securing portion is coupled to the base portion. The channel members each comprise a vertical portion for receiving the base portion and an angled portion for receiving the securing portion.

It would have been obvious to one of skill in the art to employ a different securement of the scrubbing member to the support or head of Nishiyama, such as clearly suggested by Young, as a mere art recognized alternative securement, lacking criticality to the particular type of securement, and as a way to maximize the scrubbing member dimensions. Both Nishiyama and Young disclose means to secure scrubbing members to supports. The particular manner appears to relate more to the choice of the manufacturer than on any inventive concept. Further, provision of the mounting members on the back of the scrubbing member instead of the side edges would allow for expanding the brush scrubbing field without enlargement of the head member.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nishiyama et al (US patent 4,392,269) in view of Anciale (US patent 5,791,006) and Young et al (US patent 5,083,840).

The patent to Nishiyama discloses all of the above recited subject matter with the exception of the gripping portion having an arcuate portion and straight portion and the mounting members comprising base portions with angled securing portions thereon to engage vertical and angled portions of the channels in the head.

The patents to Anciale and Young disclose all of the above recited subject matter.

It would have been obvious to one of skill in the art to curve the gripping portion of the handle of Nishiyama, as clearly suggested by Anciale, to provide a more comfortable handle. Use of arcuate gripping portions is well known.

It also would have been obvious to one of skill in the art to employ a different securement of the scrubbing member to the support or head of Nishiyama, such as clearly suggested by Young, as a mere art recognized alternative securement, lacking criticality to the particular type of securement, and as a way to maximize the scrubbing member dimensions. Both Nishiyama and Young disclose means to secure scrubbing members to supports. The particular manner appears to relate more to the choice of the manufacturer than on any inventive concept. Further, provision of the mounting members on the back of the scrubbing member instead of the side edges would allow for expanding the brush scrubbing field without enlargement of the head member.

Note that terming the apparatus a "body scrubbing apparatus" does not distinguish from Nishiyama as such can be used in any manner so desired. Such at most relates to the intended use of the device and does not define any particular structure, at least none not disclosed by Nishiyama.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary K. Graham whose telephone number is 571-272-1274. The examiner can normally be reached on Tuesday to Friday (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica S. Carter can be reached on 571-272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gary K Graham/  
Primary Examiner, Art Unit 3727

GKG  
14 January 2009